

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON

TERESA L. BOGESS,

Plaintiff,

v.

Civil Action No. 2:23-cv-00651

POSITEC TOOL CORPORATION, t/a,
a/k/a, d/b/a POSITEC USA, INC.,
and WAL-MART STORES, INC.,

Defendants.

ORDER

Pending before the court is plaintiff's Motion for Leave to Amend Complaint. ECF No. 11 (filed January 16, 2024). Neither defendant has filed a response to this motion.

This case arises from an injury suffered by plaintiff while engaging with a hedge trimmer that was allegedly designed, manufactured, assembled, distributed, and/or sold by defendants Positec Tool Corporation and Wal-Mart Stores, Inc ("Walmart"). Walmart filed a motion to dismiss, ECF No. 4, on December 18, 2023, and the parties stipulated an extension of time for plaintiff to respond thereto, see ECF No. 8. The stipulation did not explicitly extend the plaintiff's deadline to amend the complaint as a matter of course under Federal Rule of Civil Procedure 15(a)(1)(B). That deadline was January 8, 2024.

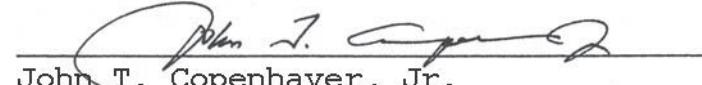
Plaintiff now seeks leave to amend the complaint to more thoroughly articulate the alleged relationship between the defendants and between defendants and the hedge trimmer at issue. Compare Compl. ¶ 9, ECF No. 1, with Proposed Amended Compl. ¶ 9-18, ECF No. 11-1.

A party may amend its pleading with leave of the court. Fed. R. Civ. P. 15(a) (2). Leave to amend should be granted "freely . . . when justice so requires." Fed. R. Civ. P 15(a) (2). Aside from there being no responses filed to this Motion for Leave to Amend Complaint, there is an absence of any suggestion that "the amendment would be prejudicial to the [defendants], there has been bad faith on the part of the moving party, or the amendment would be futile." Edwards v. City of Goldsboro, 178 F.3d 231, 242 (4th Cir. 1999).

Accordingly, it is ORDERED that plaintiffs' motion be, and it hereby is, granted. The plaintiff is directed to effect service of the amended complaint promptly.

The Clerk is directed to file the amended complaint attached to plaintiffs' motion (ECF No. 11-1). The Clerk is further requested to transmit this Order and Notice to all counsel of record and to any unrepresented parties.

ENTER: January 31, 2024


John T. Copenhaver, Jr.
Senior United States District Judge